PAUL J. FISHMAN United States Attorney By: JORDAN M. ANGER Assistant U.S. Attorney 970 Broad Street, Suite 700 Newark, NJ 07102 (973) 645-2829

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

Newark Violations Bureau,

: Hon.

Plaintiff,

v. : Civil Action No.

United States Postal Service, : <u>NOTICE OF REMOVAL</u>

Defendant. :

TO: Newark Violation Bureau Essex County Prosecutor's Office

Municipal Court of Newark

31 Green Street

Newark, New Jersey 07102

Veteran's Courthouse
50 West Market Street
Newark, New Jersey 07102

Municipal Court of Newark 31 Green Street

Newark, New Jersey 07102

Defendant, the United States of America, acting on behalf of the United States Postal Service (hereinafter "Postal Service"), through its undersigned counsel, hereby removes this action pursuant to 28 U.S.C. § 1442(a)(1) and, in support thereof, states as follows:

- 1. The United States Postal Service is an agency of the federal government of the United States of America.
- 2. In this action, Plaintiff the Newark Violation Bureau, acting through the Newark Police Department ("Newark"), issued three separate "complaint-summons" to Manuel Lizardo, a Letter Box Mechanic for the Postal Service, on February 22, 2012, while he driving a Postal

Service Vehicle. The complaint-summonses were issued while Mr. Lizardo was acting within the scope of his duty as an employee of the Postal Service. Specifically, the complaint-summonses allege that: (1) the Postal Service vehicle was unregistered; (2) Mr. Lizardo failed to wear a seatbelt; and (3) was operating a cellphone. As a result of this traffic stop, the Newark Police Department impounded the Postal Service vehicle. The vehicle has since been retrieved by the Postal Service.

- 3. The United States, through Mr. Lizardo, was served with the complaint-summonses on Febtruary 22, 2012 by Newark Police Officer L. Oyola, badge # 7857. Copies of the complaint-summonses are attached hereto as Exhibit 1.
- 4. This case presents a claim against an agency of the United States, in that the Postal Service is an agency of the federal government and its employee was acting within the scope of his employment, and thus is removable to the United States District Court under 28 U..C. § 1442(a)(1). Specifically, Postal Service vehicles as well as all vehicles owned and operated by the United States need not register in the state in which they are operated.
- 5. With regard to the remaining complaint-summonses alleging failure to wear a seatbelt and operating a cellphone, as Mr. Lizardo was acting within the scope of his employment, this action is removable to the United States District Court under 28 U.C. § 1442(a)(1). Further, this Court could exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). Specifically, all three complaint-summonses arise from the same incident and, therefore, are part of the same case and controversy.
- 6. As this removal is under 28 U.S.C. § 1442(a)(1), removal is proper without the need for the consent of any other party. *Akin v. Ashland Chem. Co.*, 156 F.3d 1030, 1034 (10th

Cir.1998); Doe v. Kerwood, 969 F.2d 165, 168 (5th Cir.1992); Ely Valley Mines, Inc. v. Hartford Accident and Indem. Co., 644 F.2d 1310, 1314-15 (9th Cir.1981); Bradford v. Harding, 284 F.2d 307, 310 (2d Cir.1960).

7. A copy of this Notice is being filed with the Municipal Court of Newark; copies are also being served on the plaintiff.

PAUL J. FISHMAN United States Attorney

/s / Jordan M. Anger
JORDAN M. ANGER
Assistant U.S. Attorney

Dated: March 19, 2012

EXHIBIT 1

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| 4-98 Speeding MPH in a MPH zone |
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The Violations Bureau is located at: 31 GREEN STREET, NEWARK, NJ 07102 Payments by mail are to be by check or money order made payable to this Municipal Court. <u>Do not send cash.</u>

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2. OFFENSE IS NOT PAYABLE OR COURT APPEARANCE REQUIRED

VIOLATIONS BUREAU HOURS: 8:30 AM to 4:00 PM PHONE: (973) 733-6520

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NEWARK, NEW JERSEY 07101-0160

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2. OFFENSE IS NOT PAYABLE OR COURT APPEARANCE REQUIRED

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Business hrs. 8:30 AM to 4:00 PM Mon. - Fri.

NOTICE

VIOLATIONS BUREAU HOURS: 8:30 AM to 4:00 PM PHONE: (973) 733-6520

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Violations Bureau
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Phone: (973) 733-6520
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